BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JOSEPH GARCIA	)	
Claimant	)	
	)	
VS.	)	
	)	
GENERAL PET SUPPLY MIDWEST L.L.C.	)	
Respondent	)	Docket No. 1,026,280
	)	
AND	)	
	)	
LIBERTY MUTUAL INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier request review of the February 10, 2006 preliminary hearing Order entered by Administrative Law Judge (ALJ) John D. Clark.

ISSUES

The ALJ granted claimant's request for further medical treatment, including the payment of Dr. George Fluter's bills as unauthorized medical, as he concluded claimant suffered an injury arising out of and in the course of his employment with respondent on November 14, 2005.[1]

The respondent requests review of the preliminary hearing Order suggesting the ALJ erred in granting claimant benefits. According to respondent, claimant suffered injury to his left foot in 1992 in a work-related incident while employed by another. And that his present complaints of pain are directly due to that injury and not attributable to his work-related activities for respondent. Respondent also contends that claimant's allegation that he somehow aggravated his condition while working came about after he was disciplined and later terminated. Thus, respondent believes claimant failed to establish that it is more

[1] Claimant pled his claim as one involving a series of injuries commencing November 3, 2005 and continuing each and every working day thereafter.

likely than not that his present complaints of pain in his left foot and both knees arose out of and in the course of his employment with respondent.

Claimant argues the preliminary hearing Order should be affirmed in all respects.

The issues to be determined by this appeal are whether claimant suffered personal injury by accident and whether that accident arose out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant was employed as a delivery driver for respondent. Claimant testified he worked approximately 2 months and over the course of his daily duties, unloading and delivering bags of dog food to customers, he began to notice his left foot swelling and causing him pain. Claimant sustained a work-related injury in 1992 to his left foot and had since been wearing orthotic inserts. Nevertheless, he maintains his daily activities caused his left foot to swell. He also began to notice pain in his knees and a feeling that the knees would "give way".

Claimant testified that he told his supervisor of this problem and that shortly thereafter, he was disciplined for not doing his job. Later he was further disciplined for not showing up for work. Claimant answers that allegation by saying that his schedule was changed without him knowing, that his pain complaints kept him from doing his job quickly enough, and in other instances, he missed work due to pain in his foot.

Claimant went to see Dr. Fluter and according to his report, Dr. Fluter diagnosed left foot pain, bilateral lower extremity pain and bilateral knee pain. Dr. Fluter's report goes on to state that "[b]ased upon the available information and to a reasonable degree of medical probability, there is a causal/contributory relationship between Mr. Garcia's current condition and work-related activities."[2]

The ALJ concluded claimant had met his burden to establish a causal connection between his ongoing complaints and his work activities. The Board has considered the evidence contained within the record and finds the ALJ's conclusion should not be disturbed.

While it is uncontroverted that claimant sustained an injury over 10 years ago to his left foot, the evidence contained within the record, at least at this juncture, supports

[2] P.H. Trans., Ex. Cl. 1 at 3.

claimant's contention that work either caused a new injury to both the left foot *and* his knees or he has, at a minimum, suffered an aggravation of his underlying condition. It is well settled in this state that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction.[3] The test is not whether the job-related activity or injury caused the condition, but whether the job-related activity or injury aggravated or accelerated the condition.[4] Whether the ALJ believed claimant suffered a new, independent injury or an aggravation of his underlying condition, claimant's claim is compensable. Accordingly, the ALJ's preliminary hearing Order is affirmed.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge John D. Clark dated February 10, 2006, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of March, 2006.

_____
BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Michael D. Streit, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[3] *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984)*; Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

[4] *Hanson v. Logan U.S.D. 326*, 28 Kan. App. 2d 92, 11 P.3d 1184, *rev. denied* 270 Kan. 898 (2001); *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).